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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/532,164

08/18/2005

Clark D. Klein Jr

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EXAMINER

ARK, DARREN W

ART UNIT

PAPER NUMBER

3643

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12/30/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/532,164	<b>Applicant(s)</b> KLEIN JR ET AL.	
	<b>Examiner</b> Darren W. Ark	<b>Art Unit</b> 3643	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 October 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 7-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 7-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group and Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 05/19/2008.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-6 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Masterson 6,370,811.

Masterson discloses a housing (12, 48) configured as a landscape element (no particular structure being recited) defining a cavity (see Figs. 3, 4) and an opening (defined between 44) to the cavity through a ground contacting surface (sides of 12); a perforated bait cartridge (12' is perforated with 40 to allow termites to pass, 30 is

perforated to receive 24 therein, 24 is perforated to receive threaded member to attach 26 to 24, 26 is perforated to receive upper end of 16; perforations not being particularly claimed); a bait material (16); a mesh-like member (42, 43) engaged with the housing (between 44) so as to cover the opening (defined between adjacent 44 about the circumference of 12), the mesh-like member allowing termites attracted to the bait material to pass therethrough into the cavity (see Fig. 4) and the bait cartridge and to infiltrate the housing (so as to consume 16 and cause it to raise the flag 24); and an inspection hatch (54-56) operably engaged with the housing (12) and configured to allow visual inspection of the cartridge within the cavity (see col. 5, lines 17-46) from outside the housing, so as to determine whether the termites have infiltrated the housing and consumed the bait material in the bait cartridge, without removing the housing from engagement with the upper ground surface (inspection can occur by monitoring flag 24 or by using bail member 56 attached to top of core portion 12' for facilitating removal thereof axially from the top of body 12 when the main cap 54 is removed wherein thereafter it can be inspected).

In regard to claim 2, Masterson discloses the inspection hatch being opaque (see Fig. 3 wherein 54-56 is illustrated in cross section as being opaque).

In regard to claim 3, Masterson discloses at least the bait cartridge (12' can be seen more readily since 16 is decreased in volume within 12' and also 24 is exposed upon threshold consumption of 16), the cavity (cavity becomes more open due to consumption of either 42 or 16), and mesh-like member (consumption of 42 causes the

volume within 12 to show more of 42) being configured to become increasingly visible through the inspection hatch as the bait material (16) is consumed.

In regard to claim 4, Masterson discloses an anchor member (50; anchor member not being particularly claimed).

In regard to claim 5, Masterson discloses the mesh-like member, the bait cartridge, and bait material being configured to cooperate to allow the bait material to contact the upper ground surface when the housing is in engagement with the upper ground surface (bottom of 12 has opening 46 allowing ground to enter 12, also openings 43, 18, 43 allow ingress of ground into contact with 16).

In regard to claim 6, Masterson discloses the bait material being self-wicking (16 of cardboard is capable of absorbing water).

4. Claims 1-6 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Nimocks 5,950,356.

Nimocks discloses a housing (11) configured as a landscape element (no particular structure being recited) defining a cavity (interior of 11) and an opening (7) to the cavity; a perforated bait cartridge (20); a bait material (sawdust inside 20); a mesh-like member (1 covers 7 and has openings 2 defined therein similar to an open mesh; mesh-like member not being particularly claimed); and an inspection hatch (6, 14).

In regard to claim 3, Nimocks discloses the cavity becoming increasingly visible as the bait material is consumed (as sawdust is consumed, cavity becomes more open).

In regard to claim 4, Nimocks discloses an anchor member (corners of 11).

In regard to claim 5, Nimocks discloses the housing, mesh-like member, bait cartridge, and bait material being configured to cooperate to allow the bait material to contact the upper ground surface when the housing is in engagement with the upper ground surface (openings 7 allow ground to come into contact with the sawdust housed within mesh bag similar to the manner in which the desired invention allows the bait material to contact the upper ground surface; also ground surface could come into housing via 6).

In regard to claim 6, Nimocks discloses the bait material as being self-wicking (sawdust is water absorbent).

### ***Response to Arguments***

5. Applicant's arguments filed 10/10/2008 have been fully considered but they are not persuasive.

In regard to applicant's argument that "Masterson fails to disclose a device configured as a landscape element", the Examiner contends that such a limitation does not particularly claim any structure that is not shown or disclosed in Masterson.

In regard to applicant's argument that "With regard to the lack of disclosure of a mesh-like member operatively engaged with the housing about the ground-contacting surface...barrier member 42 and the perforations 43 of the Masterson device as corresponding to the mesh-like member...these elements do not contact the upper ground surface...", the Examiner contends that claim 1 represents an apparatus claim but not a method of using the device of claim 1. Furthermore, the barrier member 42

and perforations 43 of Masterson are perfectly capable of contacting the upper ground surface since they are intended to be below the topmost ground surface and within an upper layer of the ground surface defined near the upper end of housing 10 when it is implanted in the soil with the cover 49 resting on the topmost surface. The mesh-like member is not being particularly claimed by applicant.

In regard to applicant's argument that "With regard to the lack of disclosure of an inspection hatch...Masterson discloses a flag member...", the Examiner contends that in claim 1 it was merely recited "an inspection hatch..." and therefore the hatch defined by parts 54-56 of Masterson can be interpreted as an inspection hatch since the flag emerges therefrom and when it does not, a user can merely peer down the inspection hatch 54-46 of Masterson to find that the flag has not tripped. The inspection hatch is not being particularly claimed by applicant.

In regard to applicant's argument that "With regard to the failure to disclose a device configured as a landscape element, Nimocks discloses burying the device...", the Examiner contends that the structure of Nimocks may be interpreted as a landscape element since applicant has failed to recite specific structure of the landscape element such that it defines over the structure of Nimocks.

In regard to applicant's argument that "Nimocks fails to disclose an opening to the cavity through a ground-contacting surface...access openings of Nimocks are not made through a ground contacting surface...", the Examiner contends that the openings 7 of Nimocks are indeed made through a ground contacting surface since the entire assembly of Nimocks is intended to be buried in the ground.

In regard to applicant's argument that "Nimocks fails to disclose a mesh-like member operably engaged with the housing about the ground contacting surface...", the Examiner contends that the part 1 of Nimocks meets the limitation of a "mesh-like" member since it has an opening 2 defined therein. Applicant has not particularly claimed the mesh-like member in a way which clearly defines over the invention of Nimocks.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Townsend 6,874,274 discloses a rock simulating pest trap with a top (70) hinged to a bottom (12). Lund 6,729,067 discloses an inspection hatch (30) hingedly connected to the housing (20, 5, 6). Su 6,397,516 discloses an opaque inspection hatch (see Fig. 1C) which is hinged to the housing (also see col. 15, lines 4-53). Simpson 6,145,242 discloses an integrated pest management system including a top (24) configured to resemble a natural rock and wherein upper bait chamber (92) can contain an insect bait and poison.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the



shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (571) 272-6885. The examiner can normally be reached on M-F, 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darren W. Ark/  
Darren W. Ark  
Primary Examiner  
Art Unit 3643

DWA